

1.0 PURPOSE AND NEED

1.1 PURPOSE AND NEED

The purpose and need of this project is to establish an inalienable tribal land base in Indiana in proximity to the Band's citizens residing in northern Indiana. The land base is needed for the Pokagon Band to provide improved governmental services to its citizens living near South Bend. The Band citizens' vision is that the tribal services would be based in a tribal village setting, including housing, community space and government office space to facilitate the reestablishment of a distinct Pokagon community within Northern Indiana. More detailed information regarding the Band's purpose and need for this proposal is provided in Section 3.7.3, Pokagon Band Socioeconomic Conditions.

In 1994, Congress reaffirmed the Pokagon Band's status as a sovereign, federally-recognized Indian tribe by enactment of the Pokagon Restoration Act, 25 U.S.C. § 1300j *et seq.* ("Restoration Act"). Section 6 of the Restoration Act mandates that the Secretary of the Interior acquire land in the name of the United States to be held in trust for the benefit of the Band ("trust land") and become part of the Band's reservation. Although, the Restoration Act mandates that the Secretary acquire trust lands for the Band, Section 6 of the Restoration Act is quite broad regarding the land acquisition process. Consequently, in 1998 the Band and the Secretary of the Interior negotiated a memorandum of understanding ("MOU") to implement the broad mandate of Section 6 of the Restoration Act. Paragraph 1 of the MOU states that the primary purpose of the MOU is "... to establish general principles setting forth the geographic areas within which the Band will acquire fee land to submit to the Secretary for acquisition in trust." Paragraph 3 of the MOU states that the geographic areas referenced in paragraph 1 shall be known as "consolidation sites," which the MOU states "... shall be located in the vicinity of Dowagiac, Michigan; New Buffalo, Michigan; Hartford, Michigan; and South Bend, Indiana." The three consolidation sites in Michigan are already in federal trust status for the benefit of the Pokagon Band. The South Bend, Indiana consolidation site is the only one of the Band's four consolidation sites that still lacks federal trust land nearly twenty years after Congress enacted the Restoration Act. Section 3.7.3.1 and Section 3.7.3.2 provide more detailed information concerning the Pokagon Band's need to restore an Indiana homeland and its prior efforts to acquire trust land in Indiana, respectively.

The Band also needs a considerable and sufficient revenue stream to use to fund the cost of development and improved government services at the South Bend tribal village consolidation site. The alternatives to generate necessary revenues consider both gaming and non-gaming options. Generally, gaming options generate much greater net revenue than do non-gaming commercial ventures. In 1988, Congress passed the Indian Gaming Regulatory Act (IGRA) in order to promote tribal economic development, tribal self-sufficiency, and strong tribal governments, with the intent that net revenues of tribally operated casinos would be used by tribal governments to provide

services for tribal citizens. IGRA requires that tribal gaming projects can only be located on lands held in trust status for that tribe.

If the tribal village concept included gaming and related hospitality facilities, the facility would create approximately 2,000 permanent jobs and generate revenues necessary to help secure a stable economic future for the Band and its citizens, to continue the Band's efforts to restore and develop the tribal land base at the South Bend Consolidation Sites, to fund Band governmental institutions, and to fund essential tribal government programs and services for the Band's Indiana citizens. The Gaming project would also support and enhance the local and regional economic development efforts, a need of the neighboring non-tribal governments.

Beginning in 2009, the Pokagon Band engaged in land use master planning efforts for all Band land holdings, including the South Bend site. The master planning was done in accordance with Article IV of the Pokagon Band Constitution as a means of addressing citizens' concerns and to help define their vision of what their homeland should include. The master planning process included:

- The compilation of basic environmental, demographic, and socioeconomic information for the South Bend site and surrounding area.
- Two separate surveys to identify the needs of the Band's citizens.
- A compilation of inventories from Band government departments.
- Community meetings to collect direct input from the tribal citizens.
- A census of all Band citizens who were at least 18 years of age.

The master planning process produced several key findings and identified the following four essential needs:

1. **Suitable Housing.** Band citizenship has been growing in Indiana. Many Pokagon Band families live in substandard housing or face issues of housing insecurity. At-risk citizens, such as the elderly, present special housing needs. A tribal land base in Indiana would provide a location to develop suitable and healthy housing for the Band's Indiana residents.
2. **Community-focused Spaces.** Travel distances, limited access to transportation, problems with mobility, and other health issues make it difficult for many Band citizens in Indiana to participate in social and cultural activities at Band consolidation sites in Michigan which, consequently, erodes vital social connections within the Band community. The proposed tribal village provides for the establishment of community facilities in close proximity to tribal housing, which will ensure that Band elders and other Band citizens in Indiana remain integrated into Pokagon Band community life.
3. **Improved Access to Band Services.** The needs of the Band's Indiana citizens for medical services, education, language training, cultural enrichment, and other programs and services are not being adequately met due to logistical challenges and cost. The tribal village

plan, which includes office space for various Band government programs and service agencies, will fulfill the need for a suitable location to deliver services to the Band's Indiana community.

4. **Jobs and Revenue.** The Band's Indiana citizens face high unemployment and low income. The Band needs a suitable location for commercial development to provide economic and employment opportunities for the Band's Indiana residents. Revenue is also needed to fund the costs of education and job training, the cost to develop the tribal village, the cost of establishing and delivering programs and services, and the cost of restoring the Band's land base in Indiana for future generations.

More detailed information regarding Pokagon Band Socioeconomic Conditions is provided in Section 3.7.3. The results of the master planning process indicated a strong need for a mixed-use development including residential, government and commercial development. The proposed development plans will address the specific unmet needs of the Band in northern Indiana. Many of the needs can only be met if the land is also taken into federal trust status, which will provide access to resources under a variety of federal programs, including reservation housing programs available under the Native American Housing Assistance and Self Determination Act of 1996; contracting and compacting opportunities under the Indian Self-Determination and Education Assistance Act of 1975; and the Indian Reservation Roads program under the Safe, Accountable, Flexible and Efficient Transportation Equity Act-A Legacy for Users.

The Pokagon Band has acquired lands in fee simple in Elkhart and South Bend, Indiana. The Band searched for lands appropriate for a tribal village and supporting commercial activity. When the Band identified the two sites as for sale and appropriate for the project, the Band acquired the lands for the purposes of creating an Indiana land base to satisfy the purpose and need. Detailed descriptions of the South Bend site and the Elkhart site are provided in Section 2.2 and Section 3.2 through Section 3.6.

The Band is the only federally-recognized Indian tribe in Indiana and has been trying over the last 10 years to establish reservation homelands in Indiana. The Band's current trust lands are located entirely in the State of Michigan. The Band has no trust land in the State of Indiana to assist it in restoring its status as a sovereign tribal nation and fulfilling its governmental responsibilities to its citizens that reside in the State of Indiana, which have been critical objectives for the Band since long before the enactment of the Pokagon Restoration Act. The Band cannot achieve these objectives without a permanent, inalienable land base in Indiana. These governmental objectives were at the heart of the Band's struggle to obtain reaffirmation by the United States of the Band's status as a sovereign, federally-recognized Indian tribe, which the United States finally provided in 1994 by enactment of the Pokagon Restoration Act, 25 U.S.C. § 1300j. The Pokagon Restoration Act reaffirmed the government-to-government relationship between the Pokagon Band of Potawatomi Indians and the United States and confirmed that the Pokagon Band possesses all the attributes of tribal sovereignty recognized under federal law.

The Band determined that a critical foundation for preserving and strengthening its tribal sovereignty and culture is the restoration of the Band's land base. The importance of restoring a tribal land-base is emphasized in the Pokagon Band Constitution, which states in Article IV (Tribal Lands): "The Pokagon Band is dedicated to re-establishing a tribal land base." In 2001, the Band filed a land trust application with the BIA for 1,460 acres of land located in St. Joseph and LaPorte Counties, Indiana ("North Liberty"), 1,434 acres in Cass County, Michigan, and 775 acres in Van Buren County, Michigan. In 2002, the North Liberty Site in St. Joseph County was removed from the land trust application in order to enroll the North Liberty land in a Wetland Reserve Program administered by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS). The qualifying portion of this acreage was used to restore a portion of the Grand Kankakee Marsh and help meet Band environmental goals. In 2011, the Band submitted a land trust application for 193.16 acres in South Bend, Indiana for housing, government offices, light commercial development and other non-gaming purposes. The Band also began the planning process for a casino it intended to develop on land located in Elkhart County, Indiana. The Band is concerned about selecting the Elkhart site because the Band found that it was an inadequate location for a casino and there may be uncertainty regarding whether land in Elkhart can be considered part of the South Bend Consolidation Site.

The acquisition of the South Bend site by the United States in trust for the Band is needed to further the goal of restoring the Band's land base in its homeland in the St. Joseph River Valley. Trust acquisition of the South Bend site is also needed to consolidate tribal land ownership within the Band's Service Area, which, in the case of the South Bend site, will facilitate the provision of tribal government services to Band citizens residing in or near the northern Indiana portion of the Band's Service Area. The Band determined that the South Bend site would be suitable for a casino and the 2011 land-in-trust application was withdrawn and replaced with the current application which utilizes fourteen out of the original fifteen South Bend site parcels and adds an additional four contiguous parcels.

1.2 PROPOSED FEDERAL ACTION

The federal action proposed by the Bureau of Indian Affairs and analyzed in this EIS involves placing ±165.81 acres of land into federal trust status for the beneficial use of the Pokagon Band of Potawatomi Indians. BIA's contemplation of the proposal is a major federal action that triggers the need for compliance with the National Environmental Policy Act (NEPA) and other environmental mandates. This document has been completed in accordance with the requirements set forth in NEPA (42 U.S.C 4321 et seq.), the Council on Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500-1508); the Indian Affairs National Environmental Policy Act (NEPA) Guidebook (59 IAM 3-H). NEPA requires the BIA to review and analyze the environmental consequences associated with the proposed action.

The foreseeable consequences of BIA's proposed federal action will be the development of the preferred alternative analyzed in this EIS. The anticipated consequences of the proposed action include the establishment of the residential, governmental and economic developments necessary for the Band to restore its status as a sovereign tribal nation and fulfill its governmental responsibilities to the tribal citizens that reside in Indiana. More specifically, the proposed site development plan includes a mixed-use tribal village with housing, community spaces, and government office space. The tribal village development includes the following components;

- A multi-purpose facility to serve as a community gathering place.
- Educational facilities and governmental office space, including health services.
- Housing units including 44 units made up of one 12 unit apartment building, 4 duplex homes and 24 single-family homes.

The proposed action also includes a Class III gaming facility with 3,000 slot machines and a total gaming and other public floor space of 216,500 feet. The foregoing proposed action is the preferred alternative and includes a tribal village and casino proposed for the South Bend site. Other alternatives include building the above described development on the Elkhart site, building the tribal village and an alternative non-gaming commercial development in place of the casino on the South Bend site and a no-action alternative that would leave the South Bend site in its present use. The four alternatives are described in detail in Chapter 2.0.

1.3 OVERVIEW OF THE ENVIRONMENTAL REVIEW PROCESS

In accordance with NEPA, an EIS must be prepared under the direction of the BIA, the federal decision maker for every major federal action that will significantly affect the human environment. This document has been completed under the direction of the BIA in accordance with the requirements set forth in NEPA (42 U.S.C 4321 et seq.), the Council on Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500–1508); and the Indian Affairs National Environmental Policy Act (NEPA) Guidebook (59 IAM 3-H).

This Draft Environmental Impact Statement (DEIS) was prepared to analyze and document the environmental consequences associated with the proposed transfer of ±165.81 acres of land into federal trust status and the proposed development alternatives. A Notice of Intent (NOI) to prepare an EIS was published in the Federal Register on August 24, 2012, with a 30-day comment period. The NOI can be found in its entirety in Appendix B. A public notice was also published in the South Bend Tribune on September 24, 2012. In addition to publishing the NOI, letters were sent out by the BIA September 12, 2012, to a mailing list of federal, state, local entities and identified concerned citizens.

The BIA held a public scoping meeting September 27, 2012, at the Century Center in South Bend to explain the project to the public and provide a forum for the public to comment on the proposed

project. Those comments were used to help identify key issues, concerns, and evaluation criteria for the EIS. Sixty-six individuals signed in at the meeting and ten of whom provided oral comments. To see a summary of the scoping meeting and all written and oral comments, see Appendix B.

Public comments were received via oral comments and comment cards returned at the scoping meeting and from written comments received from interested individuals, organizations, and government agencies. The comment period began August 24, 2012, and was closed October 9, 2012. The comments provide a mechanism by which public input can be incorporated into the impacts analysis for the proposed action. All forms of public comment were taken into consideration during the preparation of the DEIS.

According to the Bureau of Indian Affairs Guidebook a cooperating agency is “any federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed action may become a cooperating agency. (See 40 CFR 1501.6; 43 CFR 46.225)”. The following agencies received written invitations from the BIA to be cooperating agencies;

- U.S Environmental Protection Agency
- U.S Army Corps of Engineers
- U.S Department of Interior-Fish and Wildlife Service
- National Indian Gaming Commission
- Indiana Department of Environmental Management
- Indiana Department of Natural Resources (DNR)
- Indiana Department of Transportation
- Board of Public Works, South Bend, Indiana
- Chairman Matthew J. Wesaw, Pokagon Band of Potawatomi Indians

Currently, three responses have been received. The U.S. Fish and Wildlife Service has declined to be a cooperating agency due to time and budget constraints while the U.S. Environmental Protection Agency and the U.S. Army Corp of Engineers have agreed to be cooperating agencies.

1.4 REGULATORY REQUIREMENTS, PERMITS AND APPROVALS

Implementation of the Proposed Action will require tribal, federal, and state permits and approvals. Table 1.4-1 identifies each responsible agency and the potential permit or approval required.

Table 1.4-1
 Potential Permits and Approvals Required

Agency	Permit or Approval	Alternative	Permit/Approval Applicant	Status
Secretary of the Interior	Transfer of the land into federal trust status	A and C	Pokagon Band	In progress
U.S. Environmental Protection Agency	Issuance of National Pollutant Discharge Elimination System, (NPDES) Phase II General Permit or NPDES Municipal Separate Storm Sewer System (MS4) Permit for Stormwater Discharges from construction activities as Required by the Clean Water Act (CWA).	A,B and C	Pokagon Band	Will be sought after completion of NEPA process, should project be approved.
U.S. Army Corps of Engineers	Approval of permit(s) under Section 404 of the CWA for the filling of jurisdictional wetlands/waters.	A,B and C	Pokagon Band	Will be sought after completion of NEPA process, should project be approved.
U.S. Fish and Wildlife Services	Section 7 Consultation under the Federal Endangered Species Act if endangered species or their habitat may be affected by the project.	A,B and C	BIA	Concurrence with effect determinations received February 8, 2013 (see Appendix D). No further consultation necessary.
Indiana State Historic Preservation Office (SHPO)	Consultation under Section 106 of the National Historic Preservation Act	A,B and C	BIA	Letter received May 10, 2013 indicating that the SHPO did not identify any historic buildings, structures, districts, or objects listed in or eligible for inclusion in the National Register of Historical Places within the probable area of potential effects.
Tribal Historic Preservation Office (THPO)	Consultation under Section 106 of the National Historic Preservation Act	A, B and C	BIA	Letters received July 9, 2013 and November 12, 2013 indicating concurrence with BIA's findings that the undertaking will have no adverse effect.
Indiana Department of Transportation	Right of Way/Driveway Permit	Pokagon Tribe		Will be sought after completion of NEPA process, should project be approved.
U.S. Environmental Protection Agency	Registration or permit for all new facilities under the Tribal New Source Review of the Clean Air Act (CAA)	A, B and C	Pokagon Band	Will be sought after completion of NEPA process, should project be approved.

This page intentionally left blank.